

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of:

Request to Refresh Record and Amend  
The Federal Communications  
Commission's Copper Retirement Rules

WC Docket No. 12-353; RM-11358

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION  
AND THE PEOPLE OF THE STATE OF CALIFORNIA**

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The California Public Utilities Commission and the People of the State of California (California or CPUC) submit these comments in response to the January 25, 2013, letter of Mpower Communications Corp., and U.S. TelePacific Corp. (together, “TelePacific”); ACN Communications Services, Inc.; Level 3 Communications, LLC; TDS Metrocom, LLC, and Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI) requesting that the Federal Communications Commission (Commission or FCC) “refresh the record” and amend the FCC’s current copper retirement rules.<sup>1</sup> Specifically, these requesting competitive local exchange carriers (CLECs) state that “the FCC should require [incumbent LECs (ILECs)] to provide CLECs with access to unbundled copper loops even where ILECs have received FCC permission to ‘retire’ such copper loops and prohibit ILECs from removing copper loops from their network without affirmative permission from the FCC.”<sup>2</sup> These CLECs request that current rules regarding retirement be clarified to make clear that retirement only allows the ILEC to retire such loops for its own use and does not relieve the ILEC of its duty to provide unbundled access to copper loops that remain in place in the network.<sup>3</sup> The CPUC supports the CLECs’ request to refresh the record and relook at the current federal copper loop retirement rules in light of today’s market conditions. The CPUC further supports the continued ability of State commissions to adopt state copper loop retirement rules and we urge the Commission, should it amend its current copper loop retirement rules, not to prohibit such state activity.

## **DISCUSSION**

One of the major goals of Congress in enacting the Telecommunications Act of 1996 (Act) was to open local telecommunications service markets to competition. To that end, Congress imposed certain interconnection, resale, and network access requirements on ILECs through section 251 of the Act. The Act gave the FCC broad

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<sup>1</sup> Letter of US Telepacific Corp. *et al.* Requesting Commission to Refresh Record and Take Expedited Action to Update Copper Retirement Rules, WC Docket Nos. 10-188, 12-353; GN Docket Nos. 09-51, 13-5; RM-11358 (filed Jan. 25, 2013).

<sup>2</sup> *Id.* at 5.

<sup>3</sup> *Id.*

powers to require ILECs to provide CLECs with unbundled access to the elements of the ILECs' networks (unbundled network elements, or UNEs).<sup>4</sup> Section 251(c)(3) provides, in part, that it is the duty of ILECs "to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title." In its orders implementing the requirements of section 251(c)(3), the FCC ordered the ILECs to provide unbundled access to their copper loops and certain high capacity loops.<sup>5</sup> The Commission did not require the ILECs to provide access to fiber loops.<sup>6</sup> Although an ILEC must seek Commission permission to retire any copper loop --if for instance the carrier wished to replace it with a fiber loop-- there is no general prohibition today on ILEC retirement of its copper loops.<sup>7</sup>

The CPUC supports the CLECs' request to refresh the record and relook at the current federal copper loop retirement rules in light of today's market conditions. In line with congressional policy directives, FCC regulations, technological innovations and customer demands, the ILECs are escalating upgrades to their networks to be able to transmit high-speed data and video services, as well as voice. These upgrades will undoubtedly include the provision of more fiber loops as the industry moves forward.

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<sup>4</sup> See 47 U.S.C. § 251(c)(3), (d); see also *id.* at § 153(29) (defining a "network element" as "a facility or equipment used in the provision of a telecommunications service").

<sup>5</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 7 (2003) ("TRO"), corrected by Errata, 18 FCC Rcd 19020 (2003), vacated and remanded in part, *aff'd in part*, *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (DC Cir 2004) (*USTA II*), cert. denied, 543 U.S. 925 (2004), on remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533 (2005) ("TRRO"), *aff'd*, *Covad Commc'ns Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

<sup>6</sup> *TRO* ¶¶ 271-275, *aff'd USTA II*, 359 F.3d at 583-84; *TRRO* ¶ 12.

<sup>7</sup> 47 U.S.C. § 251(c)(5); 47 C.F.R. 51.325-335; *TRO* ¶ 281.

However the requesting CLECs are concerned that these upgrades could result in a significant reduction in competition. Competition is necessary to ensure customers have access to reasonably priced, high quality service in both the voice and broadband markets. The success of the deregulatory goals of the 1996 Act is predicated on competition.

The CPUC supports the initiation of an FCC proceeding to determine: 1) if CLEC access to copper loops is still necessary, at least at this time, to ensure customers have competitive alternatives to ILEC provision of telecommunications services and to competitive provision of broadband services; 2) what impact a general prohibition on ILEC retirement of copper loops, as suggested by the requesting CLECs, would have on the deployment and adoption of broadband by all Americans; and 3) any alternative solutions that would promote both competition and continued deployment of advanced services.

At this time, the CPUC does not comment on the CLECs' proposed amendments to the copper loop retirement rules. We reserve the right to comment on these issues at a later date.

The FCC has recognized that many states have their own requirements related to retirement of copper loop, and has stated that its rules do not override these requirements.<sup>8</sup> California supports the continued ability of State commissions to adopt rules concerning the disconnection, removal or disabling of copper loops in their state, and we urge the Commission, should it amend its current copper loop retirement rules, not to prohibit such state activity.

We thank the Commission for the opportunity to comment on this matter.

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<sup>8</sup> *TRO ¶¶ 271, 284.*

Respectfully submitted,

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By: /s/ KIMBERLY J. LIPPI

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